SERVICE DATE
JUNE 24, 1981

APPENDIX A

INTERSTATE COMMERCE COMMISSION

DECISION

No. MC-154182

PETROLEUM TRANSPORT, INC.,
COMMON CARRIER APPLICATION
(Lubbock, TX)

Decided: June 10, 1981

Applicant seeks a certificate authorizing the operations described in the appendix. The evidence has been considered under the modified procedure. The application is opposed by Steere Tank Lines, Inc., a motor common carrier.

Steere asks that the proceeding be set for oral hearing. However, because we do not find any material matters of fact to be in dispute, protestant's request is denied.

Applicant has demonstrated that its proposed operation will serve a useful public purpose, responsive to a public demand or need. Applicant here seeks its initial operating rights from the Commission with the support of four firms it now serves in Texas intrastate commerce.

Benton Oil Company of Lubbock, TX, Goodpasture, Inc., of Brownfield, TX, Farmland Industries, of Amarillo, TX, and Pride Refining, Inc., of Abilene, TX, ship and receive various petroleum and petroleum products (including aviation gasoline, liquid fertilizers, and jet fuel) between their facilities, customers, and vendors scattered throughout Texas and New Mexico (representative points are provided). Shippers currently use motor common carriers and their own trucks to move their traffic but claim that present service and equipment levels are inadequate, particularly during peak production and shipping periods — hence their support for applicant here.[1]

[1]Steere emphatically denies shippers' allegations of service failure on its part.

Our evaluation of the evidence in this proceeding leads us to conclude that presently available carriers, including sole protestant Steere, cannot satisfy shippers' complete transportation requirements. As such, we find that a need has been established for applicant's supplemental equipment and service.

Although Steere is handling petroleum and petroleum products within the scope of this application, and fears material traffic and revenue loss as a consequence of applicant's competition, protestant has not shown, as required, that a grant here will materially jeopardize its systemwide operations, cause injury to the public, or generally be inconsistent with the public convenience and necessity. *Arrow Transp. Co. of Delaware Ext. — Boise, ID*, 131 M.C.C. 941 (1980). In fact, Steere's failure to compare revenues derived from service in the application territory with its overall revenues makes it impossible for us to accurately access the adverse impact, if any, a grant here might have upon protestant's ability to serve the public generally. In any event, we believe it highly unlikely that a small carrier like applicant, operating only 15 pieces of equipment, could divert significant traffic from a carrier as large and well-established as Steere.

For all of these reasons, we believe that the advantages to the four supporting firms here, and to the shipping public in general, of having applicant's proposed service outweigh any potential detriment to Steere. Accordingly, we conclude that the application should be granted.

We find:

Performance by applicant of the service described in the appendix will serve a useful public purpose, responsive to a public demand or need. Applicant is fit, willing, and able properly to perform the granted service and to conform to statutory and administrative requirements. This action will not significantly affect either the quality of the human environment or conservation of energy resources. An appropriate certificate should be granted.

It is ordered:

The application is granted to the extent set forth in the appendix. Operations may begin only following the service of a *certificate* and upon compliance with the following requirements set forth in the Code of Federal Regulations: insurance (49 CFR 1043), designation of process agent (49 CFR 1044), and tariffs (49 CFR 1310).

Compliance with these requirements must be made within 90 days after the date of service of the decision or the grant of authority shall be void.

By the Commission, Review Board Number 2, Members Carleton, Fisher, and Williams.

Agatha L. Mergenovich
Secretary

(SEAL)

APPENDIX

Authority to conduct the following operations will be issued in an appropriate document. This decision does not constitute authority to operate.

To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *petroleum and petroleum products*, between points in Texas and New Mexico.

SERVICE DATE
SEPTEMBER 2, 1981

APPENDIX B
INTERSTATE COMMERCE COMMISSION
DECISION
No. MC-154182
PETROLEUM TRANSPORT, INC.,
COMMON CARRIER APPLICATION
(Lubbock, TX)

Decided: August 28, 1981

We have considered the application and the record in this proceeding, and the appeal filed by protestant Steere Tank Lines, Inc., and reply filed by applicant.

Prostestant Steere renews its request for oral hearing for the purpose of cross examining applicant and its witnesses. However, since there are no *material* facts in dispute and the issues have been resolved by means of the written materials which have been submitted, an efficient disposition of the proceeding can be made without oral hearing. Protestant's request is denied.

It is ordered:

Protestant Steere Tank Lines, Inc's motion for oral hearing is denied.

The appeal is denied because the findings of Review Board Number 2 are in accordance with the evidence and the applicable law.

Operations may begin only following the service of a *certificate* which will be issued upon compliance with the following requirements set forth in the Code of Federal Regulations: insurance (49 CFR 1043) designation of process agent (49 CFR 1044), and tariffs (49 CFR 1310).

This decision will be effective 15 days from its date of service.

By the Commission, Division 2, Acting as an Appellate Division, Commissioners Gresham, Gilliam, and Taylor. Commissioner Taylor did not participate.

(SEAL)

Agatha L. Mergenovich
Secretary

NOTICE: This proceeding is now administratively final within the meaning of 49 CFR 1101.2(f) of the Commission's regulations; and, in accordance with the provisions of section 558(c) of the Administrative Procedure Act, any corresponding temporary authority expires and operations thereunder must cease upon the effective date of this decision, except that to the extent permanent authority is granted in this proceeding (and if partial, only to that extent) the corresponding temporary authority or portion thereof will continue in effect until a certificate or permit is issued and becomes effective. The filing of any further pleadings in this matter will not stay the expiration of the temporary authority related to the denied portion of the sought permanent authority.

SERVICE DATE
OCTOBER 30, 1981

APPENDIX C

INTERSTATE COMMERCE COMMISSION

DECISION

No. MC-154182 F

PETROLEUM TRANSPORT, INC.,
COMMON CARRIER APPLICATION
(Lubbock, TX)

Decided: October 19, 1981

We have considered the record in this proceeding, including the discretionary appeal filed by protestant Steere Tank Lines, Inc., and the reply by applicant, which embraces a motion to dismiss the appeal.

It is ordered:

The motion to dismiss is denied.

The appeal is denied.

By the Commission, Chairman Taylor, Vice Chairman Clapp, Commissioners Gresham and Gilliam.

(SEAL)

Agatha L. Mergenovich
Secretary

SERVICE DATE
JANUARY 27, 1982

APPENDIX D

INTERSTATE COMMERCE COMMISSION CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

No. MC-154182

PETROLEUM TRANSPORT, INC.

(Lubbock, TX)

This Certificate of Public Convenience and Necessity is evidence of the carrier's authority to engage in transportation as a common carrier by motor vehicle.

This authority will become effective only when the carrier has met the compliance requirements pertaining to insurance coverage for the protection of the public (49 CFR 1043), the designation of agents upon whom process may be served (49 CFR 1044), and tariffs or schedules (49 CFR 1300 through 1310, revised). The carrier shall also render reasonably continuous and adequate service to the public. Failure to meet these conditions will constitute sufficient grounds for the suspension, change, or revocation of this authority.

This authority is subject to any terms, conditions, and limitations as are now, or may later be, attached to this privilege.

For all carriers: Any duplication in this authority and rights currently held does not confer more than one operating right.

For common carriers with irregular route authority: Any irregular route authority authorized in this certificate may not be tacked or joined with your other irregular route authority unless joinder is specifically authorized.

The transportation service to be performed is described on the reverse side of this document and will be valid as long

as the carrier maintains compliance with the above requirements.

By the Commission.

Agatha L. Mergenovich
Secretary

(SEAL)

Note: If there are any discrepancies regarding this document please notify the Commission within 30 days.

To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *petroleum and petroleum products*, between Texas and New Mexico.

APPENDIX E

STEERE TANK LINES, INC., Petitioner,

v.

INTERSTATE COMMERCE COMMISSION
and United States of America, Respondents.

No. 81-4497

Summary Calendar.

United States Court of Appeals,
Fifth Circuit.

September 27, 1982.

Competing trucking company appealed from order of the Interstate Commerce Commission granting a certificate of public convenience and necessity to transport company for authority to haul petroleum and petroleum products between Texas and New Mexico. The Court of Appeals held that: (1) the Commission's order satisfied "substantial evidence" standard for all three required showings under the Motor Carrier Act, and (2) oral hearing was not required.

Affirmed.

1. Commerce — 173

Under the Administrative Procedure Act, Court of Appeals must uphold findings of the Interstate Commerce Commission if they are grounded on such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. 5 U.S.C.A. §706(2).

2. Commerce — 108

Order of the Interstate Commerce Commission granting a certificate of public convenience and necessity to transport company to haul petroleum and petroleum products between Texas and New Mexico satisfied "substantial evidence" standard for required showings that transport company was "fit, willing, and able" to perform the proposed services, that

"the service proposed will serve as useful public purpose, responsive to a public demand or a need," and that transportation authorized by the certificate was not inconsistent with public convenience and necessity. Revised Interstate Commerce Act, 49 U.S.C.A. § 10922(b)(1).

3. Commerce — 116

Oral hearing would have done nothing to change decision of the Interstate Commerce Commission granting a certificate of public convenience and necessity and, therefore, was not required. Interstate Commerce Commission Rules 1100.43, 11100.253(i)(3), 49 U.S.C.A.App.

Petition for Review of an Order of the Interstate Commerce Commission.

Before RUBIN, POLITZ and RANDALL, Circuit Judges.

PER CURIAM:

Petitioner Steere Tank Lines, Inc. appeals the grant of a certificate of public convenience and necessity to Petroleum Transport, Inc. Steere argues, first, that the Interstate Commerce Commission's findings supporting the certificate were arbitrary and capricious and not based on substantial evidence, and second, that Steere in any event should have been given the chance to cross examine Petroleum Transport's witnesses at an oral hearing. For the reasons set out below, we reject both arguments and find that the Commission's determinations were not arbitrary and capricious and were based on substantial evidence and that a hearing consisting solely of written submissions was enough.

Petroleum Transport, a small intrastate carrier based in Texas, originally applied in January, 1981, for authority to haul petroleum and petroleum products between Texas and New Mexico. Along with a verified statement of its president, Petroleum Transport accompanied its application with supporting affidavits from four shippers, who all said that they

would use the proposed new service. Steere, a much larger carrier already well established in the Texas-New Mexico petroleum hauling business, filed a timely protest. As it now often does in certificate application cases, the Commission handled the proceedings under a streamlined "modified procedure," which permits a decision on the basis of written submissions alone. *See* ICC Rules 43–52, 49 C.F.R. §§ 1100.43–.52 (1981). Six months later, in June, 1981, a review board of three Commission employees granted the application. *Petroleum Transport, Inc., Common Carrier Application*, No. MC–154182 (ICC Review Board No. 2 June 10, 1981). After Steere unsuccessfully appealed to a division of three Commissioners, the review board's decision automatically became final on August 28, 1981. The case has now come to us from the Commission on a direct appeal pursuant to 28 U.S.C. §§ 2321, 2341–2349 (1976). We turn first to the issue of substantial evidence.

1. THE SUBSTANTIAL EVIDENCE REVIEW.

Under the Motor Carrier Act of 1980, the Interstate Commerce Commission must make three important factual determinations before issuing a certificate of public convenience and necessity: the petitioner must carry an initial burden of showing that it is "fit, willing, and able" to perform the proposed services; the petitioner must show that "the service proposed will serve a useful public purpose, responsive to a public demand or need"; and (once the first two showings have shifted the burden of proof) protesting carriers must fail to carry their burden of showing that "the transportation to be authorized by the certificate is inconsistent with the public convenience and necessity." 49 U.S.C.A. §§ 10922(b)(1) (West Supp.1982).

[1] Our review of the Commission's findings is necessarily quite limited. We may not disturb the Commission's order unless we find that its conclusions were "arbitrary, capricious, an abuse of discretion, . . . not in accordance with law, . . . [or] unsupported by substantial evidence." Administrative Procedure Act § 10(e)(2), 5 U.S.C. § 706(2)(1976).

We must, in other words, uphold the Commission's findings if they are grounded on "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401, 91 S.Ct. 1420, 1427, 28 L.Ed.2d 842 (1971) (quoting *Consolidated Edison Co. v. NLRB*, 305 U.S. 197, 229, 59 S.Ct. 206, 216, 83 L.Ed. 126 (1938)); *J. H. Rose Truck Line, Inc. v. ICC (Rose I)*, 683 F.2d 943 at 948–49 (5th Cir. 1982); *Nueces County Navigation District No. 1 v. ICC*, 674 F.2d 1055, at 1062 (5th Cir. 1982); *Alamo Express, Inc. v. ICC*, 673 F.2d 852, 856 (5th Cir. 1982); K. Davis, *Administrative Law Treatise* § 29.00–1, at 531 (Supp.1982) ("The term 'substantial evidence' can mean evidence which is deemed substantial, or it can mean agency action which is reasonable or which has a rational basis, or it can mean a mixture of those two ideas."). *See also Refrigerated Transport Co. v. ICC* 663 F.2d 528, 530–31 (5th Cir. 1982) (analyzing ICC order under an "arbitrary and capricious" — "substantial evidence" standard of review). And although it is true, as Steere has repeatedly emphasized in these proceedings, that a court "cannot 'accept appellate counsel's *post hoc* rationalizations for agency action'; for an agency's order must be upheld, if at all, 'on the same basis articulated in the order by the agency itself,'" *Federal Power Commission v. Texaco, Inc.*, 417 U.S. 380, 397, 94 S.Ct. 2315, 2326, 41 L.Ed.2d 141 (1974) (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168–69, 83 S.Ct. 239, 245–50, 9 L.Ed.2d 207 (1962)), it is equally true, as we have said in nearly every recent public convenience and necessity case, that "the Commission's explanation need not be crystalline, as long as it enables the parties to understand the basis of the decision," *J. H. Rose Truck Line, Inc. v. ICC (Rose II)*, 683 F.2d 952, at 956 (5th Cir. 1982); *Trailways, Inc. v. ICC*, 681 F.2d 252, 254 (5th Cir. 1982); *Alamo Express, supra*, 673 F.2d at 856; *Central Freight Lines, Inc. v. United States*, 669 F.2d 1063, 1074 (5th Cir. 1982).

Steere argues that the Commission has failed to meet the requisite standard for all three of the required findings. We find none of the arguments persuasive.

[2] As the Commission pointed out in its order of June 10th, *supra*, Petroleum Transport has fifteen pieces of equipment (truck tractors and trailers) with which to perform the proposed service. It is already engaged in the petroleum hauling business between points in Texas. Steere's argument that Petroleum Transport was not properly found to be fit, willing, and able therefore verges on the frivolous. *See Steere Tank Lines, Inc. v. ICC*, 675 F.2d 103 (5th Cir. 1982) ("fit, willing, and able" determination upheld for company that operated sixteen trucks from one terminal); *cf. American Trucking Associations, Inc. v. ICC*, 659 F.2d 452, 473 (5th Cir. 1981) (negative implication that carrier already having tank trucks and experienced in their proper use is virtually automatically "fit, willing, and able" to serve public for such loads), *clarified and enforced through mandamus*, 669 F.2d 957 (1982).

Steere's argument that the Commission wrongly determined that it had not met its burden of showing (in rebuttal) that the certificate granted "is inconsistent with the public convenience and necessity" also appears insubstantial. Steere operates 798 pieces of equipment from fourteen terminals in Texas and New Mexico. We conclude that the Commission's determination that it is "highly unlikely that a small carrier like applicant, operating only 15 pieces of equipment, could divert significant traffic from a carrier as large and well-established as Steere," *Petroleum Transport, Inc., Common Carrier Application*, *supra*, is based on substantial evidence and rationally supports a conclusion that granting the certificate "will [not] materially jeopardize [Steere's] systemwide operations, cause injury to the public, or generally be inconsistent with the public convenience and necessity." *Id.*

Steere's third argument — that Petroleum Transport has failed to meet its burden of showing that its proposed service will serve "a useful public purpose, responsive to a public demand or need" — is more serious, but also ultimately unpersuasive. The problem lies chiefly with an unfortunate emphasis in the Commission's order on the inadequacy of

existing common carrier services rather than on the usefulness of the proposed new service.[1]

As Congress noted when it passed section 10922(b)(1) of the 1980 Act, "[t]he normal way to . . . [meet this test] has been for applicants to submit evidence of some of those who would use the service proposed. [We think] that this is still the most effective evidence." H.R.Rep.No. 96-1069, 96th Cong., 2d Sess. 14, *reprinted in* 1980 U.S. Code Cong. & Ad.News 2283, 2296. All four of the shippers testifying for Petroleum Transport not only asserted that they "would use" the new service, but noted the exact number of shipments per month (or week) that they expected to tender if the new service were approved. The Commission's order unmistakably, if indirectly, indicates that it was aware of and considered this evidence. This is more than enough to satisfy the "substantial evidence" test. Our review need proceed no further.

We therefore conclude that the Commission's order satisfies the "substantial evidence" standard for all three of the required showings under section 10922(b)(1) of the Motor Carrier Act.

II. THE DENIAL OF AN ORAL HEARING.

Steere claims nonetheless that some of the evidence was ambiguous and that it should have been granted an opportunity to present its case at an oral hearing. The Commission responds, and we think persuasively, that the contested evidence is immaterial and that an oral hearing could serve no useful purpose.

---

[1]The Commission's order noted in particular, "Shippers currently use motor common carriers and their own trucks to move their traffic, but claim that present service and equipment levels are inadequate, particularly during peak production and shipping periods — hence their support for applicant here." *Petroleum Transport, Inc., Common Carrier Application, supra.* Steere correctly observes that only the testimony of G. M. "Buddy" Forbess supports this statement, and that his testimony is vigorously challenged by a witness for Steere. But as we explain in Part II, *infra*, Mr. Forbess' testimony is not necessary to support the grant of the certificate.

The Commission's rules state:

> The Commission may, in its discretion, order that a proceeding be heard under modified procedure [*i.e.*, without oral hearing] if it appears that substantially all important issues of material fact may be resolved by means of written materials and that the efficient disposition of the proceeding can be made without oral hearing.

ICC Rule 43, 49 C.F.R. § 1100.43 (1981). *See also*, ICC Rule 253(i)(3), 49 C.F.R. at § 1100.253(i)(3) (oral hearings granted "only where use of modified procedure would prejudice a party [or] material issues of decisional fact cannot adequately be resolved without an oral hearing"). The "material" contested issue in the present dispute concerns the testimony of G. M. "Buddy" Forbess, who testified both in his capacity as president of the petitioner, Petroleum Transport, and as president of Benton Oil, one of the four supporting shippers. The Commission determined that the new service would serve "a useful public purpose, responsive to a public demand or need" partly on the ground that present carrier services were inadequate, and only Benton Oil, through Mr. Forbess, seemed to be strongly dissatisfied with the present situation. Record at 9 ("Steere's service tends to be non-responsive. We have to arrange loads one (1) week in advance because of difficulty in getting trucks.").

[3] But the issue in this case is *not* whether present service is inadequate, *cf. Ex Parte No. MC-121*, 44 Fed.Reg. 60, 296-98 (1979) (ICC policy statement eliminating "adequacy of existing service" as an evidentiary factor insofar as it places "on the applicant the specific burden of showing that the service it proposes cannot be provided as well by existing carriers"), but rather merely whether shippers "would use" the new service. H.R.Rep.No. 96-1069, *supra*. On this issue, the record leaves no room for doubt. The new service will be used. It necessarily follows that even if Mr. Forbess were impeached during oral cross exam-

ination, the Commission would still issue the certificate. *See Trailways, Inc., supra*, 681 F.2d at 254 ("Although there clearly were disputed issues in this case, Trailways does not point to any issue of material fact as to which oral hearing was necessary for its efficient disposition, even though . . . the testimony of isolated witnesses might have been weakened by cross-examination as to details."); *cf. Rose I, supra* (upholding ICC certificate grant even though *no* shippers testified in its support). An oral hearing, in short, would do nothing to change the Commission's decision, and is therefore not required.

The order of the Commission is AFFIRMED.

APPENDIX F

Supreme Court of the United States

No. A-524

STEERE TANK LINES, INC.

v.

INTERSTATE COMMERCE COMMISSION
AND UNITED STATES

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of counsel for petitioner,

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including January 17, 1983.

/s/ Byron R. White
Associate Justice of the Supreme
Court of the United States

Dated this 10th day
of December, 1982.

APPENDIX G

Pertinent provisions of the Motor Carrier Act of 1980, unincorporated into Title 49—

PUBLIC LAW 96-296—JULY 1, 1980

Public Law 96-296
96th Congress

An Act

To amend subtitle IV of title 49, United States Code, to provide for more effective regulation of motor carriers of property, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Motor Carrier Act of 1980".

PURPOSE OF THE ACT

SEC. 2. This Act is part of the continuing effort by Congress to reduce unnecessary regulation by the Federal Government.

CONGRESSIONAL FINDINGS

SEC. 3. (a) The Congress hereby finds that a safe, sound, competitive, and fuel efficient motor carrier system is vital to the maintenance of a strong national economy and a strong national defense; that the statutes governing Federal regulation of the motor carrier industry are outdated and must be revised to reflect the transportation needs and realities of the 1980's; that historically the existing regulatory structure has tended in certain circumstances to inhibit market entry, carrier growth, maximum utilization of equipment and energy resources, and opportunities for minorities and others to enter the trucking industry; that protective regulation has resulted in some operating inefficiencies and some anticompetitive pricing; that in order to reduce the uncertainty felt by the Nation's transportation industry, the

Interstate Commerce Commission should be given explicit direction for regulation of the motor carrier industry and well-defined parameters within which it may act pursuant to congressional policy; that the Interstate Commerce Commission should not attempt to go beyond the powers vested in it by the Interstate Commerce Act and other legislation enacted by Congress; and that legislative and resulting changes should be implemented with the least amount of disruption to the transportation system consistent with the scope of the reforms enacted.

(b) The appropriate authorizing committees of Congress shall conduct periodic oversight hearings on the effects of this legislation, no less than annually for the first 5 years following the date of enactment of this Act, to ensure that this Act is being implemented according to congressional intent and purpose.

NATIONAL TRANSPORTATION POLICY

SEC. 4. Section 10101(a) of title 49, United States Code, is amended—

(1) by striking out "and" at the end of paragraph (5);

(2) by striking out the period at the end of paragraph (6) and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following new paragraph:

"(7) with respect to transportation of property by motor carrier, to promote competitive and efficient transportation services in order to (A) meet the needs of shippers, receivers, and consumers; (B) allow a variety of quality and price options to meet changing market demands and the diverse requirements of the shipping public; (C) allow the most productive use of equipment and energy resources; (D) enable efficient and well-managed carriers to earn adequate profits, attract capital, and maintain fair wages and working conditions; (E) provide and maintain service to small communities and small shippers; (F) improve and

maintain a sound, safe, and competitive privately-owned motor carrier system; (G) promote greater participation by minorities in the motor carrier system; and (H) promote intermodal transportation."

MOTOR CARRIER ENTRY POLICY

SEC. 5. (a) Section 10922 of title 49, United States Code, is amended—

(1) in subsection (a) by inserting "of passengers" after "motor common carrier";

(2) by redesignating subsections (b), (c), (d), (e), and (f), and all references thereto, as subsections (c), (d), (e), (f), and (g), respectively; and

(3) by inserting after subsection (a) the following new subsection:

"(b) (1) Except as provided in this section, the Interstate Commerce Commission shall issue a certificate to a person authorizing that person to provide transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title as a motor common carrier of property if the Commission finds—

"(A) that the person is fit, willing, and able to provide the transportation to be authorized by the certificate and to comply with this subtitle and regulations of the Commission; and

"(B) on the basis of evidence presented by persons supporting the issuance of the certificate, that the service proposed will serve a useful public purpose, responsive to a public demand or need;

unless the Commission finds, on the basis of evidence presented by persons objecting to the issuance of a certificate, that the transportation to be authorized by the certificate is inconsistent with the public convenience and necessity.

"(2) In making a finding under paragraph (1) of this subsection, the Commission shall consider and, to the extent applicable, make findings on at least the following:

"(A) the transportation policy of section 10101(a) of this title; and

"(B) the effect of issuance of the certificate on existing carriers, except that the Commission shall not find diversion of revenue or traffic from an existing carrier to be in and of itself inconsistent with the public convenience and necessity.

"(3) The Commission may not make a finding relating to public convenience and necessity under paragraph (1) of this subsection which is based upon general findings developed in rulemaking proceedings."

Pertinent provisions of
Title 49 with the Motor Carrier Act
of 1980 incorporated—

§ 10101. Transportation policy

(a) Except where policy has an impact on rail carriers, in which case the principles of section 10101a of this title shall govern, to ensure the development, coordination, and preservation of a transportation system that meets the transportation needs of the United States, including the United States Postal Service and national defense, it is the policy of the United States Government to provide for the impartial regulation of the modes of transportation subject to this subtitle, and in regulating those modes—

(1) to recognize and preserve the inherent advantage of each mode of transportation;

(2) to promote safe, adequate, economical, and efficient transportation;

(3) to encourage sound economic conditions in transportation, including sound economic conditions among carriers;

(4) to encourage the establishment and maintenance of reasonable rates for transportation without unreasonable discrimination or unfair or destructive competitive practices;

(5) to cooperate with each State and the officials of each State on transportation matters;

(6) to encourage fair wages and working conditions in the transportation industry; and

(7) with respect to transportation of property by motor carrier, to promote competitive and efficient transportation services in order to (A) meet the needs of shippers, receivers, and consumers; (B) allow a variety of quality and price options to meet changing market demands and the diverse requirements of the shipping public; (C) allow the most productive use of equipment and energy resources; (D) enable efficient and well-managed carriers to earn adequate profits, attract capital, and maintain fair wages and working conditions; (E) provide and maintain service to small communities and small shippers; (F) improve and maintain a sound, safe, and competitive privately-owned motor carrier system; (G) promote greater participation by minorities in the motor carrier system; and (H) promote intermodal transportation.

(b) This subtitle shall be administered and enforced to carry out the policy of this section.

§ 10922. Certificates of motor and water common carriers

(a) Except as provided in this section and section 10930(a) of this title, the Interstate Commerce Commission shall issue a certificate to a person authorizing that person to provide transportation subject to the jurisdiction of the Commission under subchapter II or III of chapter 105 of this title as a motor common carrier of passengers or water common carrier, respectively, if the Commission finds that—

(1) the person is fit, willing, and able—

(A) to provide the transportation to be authorized by the certificate; and

(B) to comply with this subtitle and regulations of the Commission; and

(2) the transportation to be provided under the certificate is or will be required by the present or future public convenience and necessity.

(b) (1) Except as provided in this section, the Interstate Commerce Commission shall issue a certificate to a person authorizing that person to provide transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title as a motor common carrier of property if the Commission finds—

(A) that the person is fit, willing, and able to provide the transportation to be authorized by the certificate and to comply with this subtitle and regulations of the Commission; and

(B) on the basis of evidence presented by persons supporting the issuance of the certificate, that the service proposed will serve a useful public purpose, responsive to a public demand or need;

unless the Commission finds, on the basis of evidence presented by persons objecting to the issuance of a certificate, that the transportation to be authorized by the certificate is inconsistent with the public convenience and necessity.

(2) In making a finding under paragraph (1) of this subsection, the Commission shall consider and, to the extent applicable, make findings on at least the following:

(A) the transportation policy of section 10101(a) of this title; and

(B) the effect of issuance of the certificate on existing carriers, except that the Commission shall not find diversion of revenue or traffic from an existing carrier to be in and of itself inconsistent with the public convenience and necessity.

(3) The Commission may not make a finding relating to public convenience and necessity under paragraph (1) of this subsection which is based upon general findings developed in rulemaking proceedings.